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STEPHEN D. RIDEN, (TO BE ADMITTED *PRO HAC VICE*), SRIDEN@FOLEY.COM

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

GREGORY SHADE,

Plaintiff.

VS.

DANIEL PATRICK GORMAN, individually and doing business as CHARLIE SEVEN FILMS, LLC, FRAMEBIRD MEDIA, CHIP R. BEASLEY, and ANDREW ELLIS,

Defendants.

Case No: 3:08-cv-03471-SI

***EX PARTE MOTION TO EXTEND
TIME TO RESPOND TO THE
COMPLAINT***

Judge: Hon. Susan Illston

Judge: Hon. Susan Minton
Dent: Courtroom 10, 19th Floor

1 Pursuant to Federal Rule of Civil Procedure 6(b) and Northern District of California
 2 Local Rules 6-3, 7-10 and 7-11, Defendant Andrew Ellis requests a 21-day enlargement of time,
 3 until September 8, 2008, to respond to Plaintiff's complaint. Under the current schedule, an
 4 answer or response is due on August 18, 2008. See F.R.C.P. 12(a)(1)(A)(i) (20 days from date
 5 of service, July 28, 2008, not including weekends). An extension of time to respond is necessary
 6 because Mr. Ellis recently obtained pro bono counsel who will require additional time to
 7 determine whether a Rule 12 motion is appropriate, and if so, to prepare the same. As of
 8 August 14, 2008, Plaintiff's counsel had not yet granted Defendant's repeated requests for an
 9 extension.

10 Under Federal Rule of Civil Procedure 6(b), this Court may grant an extension of time *ex*
 11 *parte*. F.R.C.P. 6(b) ("with or without motion or notice"); see also, SCHWARZER *ET AL*, CAL.
 12 PRAC. GUIDE: FED. CIV. PRO. BEFORE TRIAL (The Rutter Group 2008) ("On a showing of 'good
 13 cause,' the court may sign an *ex parte* order extending the time within which any act is required
 14 or allowed to be done...").

15 Good cause for an extension is present because counsel at Foley & Lardner LLP agreed
 16 to represent Mr. Ellis on a pro bono basis last week and is still completing its review of the
 17 complaint and conducting factual inquiry. Counsel's initial review indicates possible grounds
 18 for a motion under Federal Rule of Civil Procedure 12. The current August 18, 2008 due date
 19 would make it impracticable to complete such a motion. See attached Declaration of Stephen
 20 Riden ("Riden Decl.") at ¶ 2.

21 Mr. Ellis' counsel promptly contacted Plaintiff's counsel on August 11, 2008 asking for
 22 an extension of time. In response, Plaintiff's counsel stated that he is "not authorized to respond
 23 to [the] request." Riden Decl. at ¶ 3. On August 13, 2008, Mr. Ellis' counsel spoke to Plaintiff's
 24 counsel by phone to determine whether an extension could be granted, but Plaintiff's counsel
 25 stated that he was not authorized to grant any extensions and that he could not reach his client,
 26 who was out of the country, to discuss this matter. Riden Decl. at ¶ 4. Plaintiff's counsel
 27 explained that he would try again to reach his client and then phone Mr. Ellis' counsel to provide
 28 a definitive response to Mr. Ellis' request for an extension. Riden Decl. at ¶ 5.

1 As of 12:00 p.m. PDT on August 14, 2008, Plaintiff's counsel had not yet replied
2 regarding Defendant's requested extension. Riden Decl. at ¶ 6.

3 In none of these exchanges did Plaintiff's counsel cite any prejudice from an extension.
4 Riden Decl. at ¶ 7. There have been no previous time modifications in this action and the
5 requested time modification would have no other effect on the schedule of this case. Riden Decl.
6 at ¶ 8. The requested 21-day enlargement of time would permit counsel to fully analyze the
7 allegations of the complaint and prepare a motion to dismiss or an answer, as appropriate. In the
8 absence of an extension, this ability would be prejudiced. As a Rule 12 motion could allow the
9 Court to narrow the issues in dispute, and Plaintiff's counsel has cited no prejudice from an
10 extension, the Court should grant the requested enlargement of time to respond until
11 September 8, 2008. On August 14, 2008, this Court allowed a similar motion filed by Mr. Ellis'
12 co-defendants. See Order by Judge Illston granting [17] Ex Parte Application (Document
13 No. 19).

14
15 FOLEY & LARDNER LLP

16 Dated: August 14, 2008

17 By: _____ /S/
18 KIMBERLY K. DODD
19 ATTORNEYS FOR DEFENDANT ANDREW ELLIS
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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

18 GREGORY SHADE,

19 Plaintiff,

20 vs.

21 DANIEL PATRICK GORMAN, individually
22 and doing business as CHARLIE SEVEN
23 FILMS, LLC, FRAMEBIRD MEDIA, CHIP R.
24 BEASLEY, and ANDREW ELLIS,

25 Defendants.

26 Case No: 3:08-cv-03471-SI

27 **DECLARATION OF STEPHEN RIDEN IN
28 SUPPORT OF *EX PARTE* MOTION
TO EXTEND TIME TO RESPOND TO
THE COMPLAINT**

Judge: Hon. Susan Illston
Dept: Courtroom 10, 19th Floor

1 I, Stephen Riden, declare as follows:

2 1. I am an attorney duly admitted to practice in the Commonwealth of Massachusetts
 3 and am an attorney at the law firm of Foley & Lardner LLP, counsel for Defendant Andrew Ellis
 4 in the above-captioned matter. I have personal knowledge of the matters stated herein, and if
 5 called to testify, could and would testify competently thereto.

6 2. Counsel at Foley & Lardner LLP agreed to represent Mr. Ellis on a pro bono basis
 7 last week and is still completing its review of the Complaint and conducting factual inquiry.
 8 Counsel's initial review indicates possible grounds for a motion under Rule 12 of the Federal
 9 Rules of Civil Procedure. The current August 18, 2008, due date would make it impracticable to
 10 complete such a motion.

11 3. Mr. Ellis' counsel contacted Plaintiff's counsel on August 11, 2008 asking for an
 12 extension of time. In response, Plaintiff's counsel stated that he is "not authorized to respond to
 13 [the] request." A true and correct copy of the email exchange between Plaintiff's counsel and
 14 Mr. Ellis' counsel is attached hereto as Exhibit A.

15 4. On August 13, 2008, Mr. Ellis' counsel spoke to Plaintiff's counsel by phone to
 16 determine whether an extension could be granted, but Plaintiff's counsel reiterated that he was
 17 not authorized to grant any extensions and stated that he could not reach his client, who was out
 18 of the country, to discuss this matter.

19 5. Plaintiff's counsel explained that he would try again to reach his client and then
 20 phone Mr. Ellis' counsel to provide a definitive response to Mr. Ellis' request for an extension.

21 6. As of 11:00 a.m. PDT on August 14, 2008, Plaintiff's counsel had not yet replied
 22 regarding Mr. Ellis' requested extension.

23 7. In none of these exchanges did Plaintiff's counsel cite any prejudice from an
 24 extension.

25 8. There have been no previous time modifications in this action and the requested
 26 time modification would have no other effect on the schedule for this case.

27 9. I declare under penalty of perjury that the foregoing is true and correct. Executed
 28

DECLARATION OF STEPHEN RIDEN RE *EX PARTE* MOTION TO EXTEND
 TIME TO RESPOND TO COMPLAINT
 CASE NO. 3:08-cv-03471-SI

1 on August 14, 2008, in Boston, Massachusetts.

2 /s/ Stephen Riden

3 Stephen Riden

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Exhibit A

Riden, Stephen D.

From: Riden, Stephen D.
Sent: Wednesday, August 13, 2008 1:08 PM
To: Steven L. Hammond
Subject: RE: Shade v. Gorman, et al.: Response to complaint

Mr. Hammond,

Please let me know if you are willing to grant the courtesy of an extension to Mr. Ellis, or whether motion practice will be necessary. Please be advised that I believe in extending courtesies to opposing counsel and routinely grant such extensions to attorneys who request them from me.

Regards

Stephen D. Riden
Foley & Lardner LLP
www.foley.com

From: Steven L. Hammond [mailto:slh@hammondlawsf.com]
Sent: Tuesday, August 12, 2008 2:30 PM
To: Riden, Stephen D.
Subject: RE: Shade v. Gorman, et al.: Response to complaint

Stephen,

I am not authorized to respond to your request other than to state that I cannot determine Mr. Shade's position at this time and on that basis cannot presently grant an extension.

Regards,
Steve Hammond

Steven L. Hammond
Hammond Law
One Ferry Building, Suite 350
San Francisco, CA 94111

Tel: 415-955-1915
Fax: 415-955-1976

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From: Riden, Stephen D. [mailto:SRiden@foley.com]
Sent: Tuesday, August 12, 2008 11:08 AM
To: slh@hammondlawsf.com
Subject: RE: Shade v. Gorman, et al.: Response to complaint

Steven,

Have you had a chance to consider my request below?

Thanks

Stephen D. Riden
Foley & Lardner LLP
www.foley.com

From: Riden, Stephen D.
Sent: Monday, August 11, 2008 3:56 PM
To: slh@hammondlawsf.com'
Subject: RE: Shade v. Gorman, et al.: Response to complaint

Steven,

As we discussed, last week I reached out to the other defendants in this action and on Friday I spoke with their attorney. He is going to speak with his clients and get back to me with his views on your settlement terms.

Since all of the parties are cooperating to determine whether there is a possibility of settlement at this stage, I respectfully request additional time to respond to the complaint. In this regard, I am requesting an extension to September 1, 2008, to answer or otherwise respond to the complaint on behalf of my client, Andrew Ellis. Will you agree to such an extension?

I will touch base with you as soon as I speak with the attorney for the co-defendants.

Thank you for your courtesy in this matter.

Regards

Stephen D. Riden
Foley & Lardner LLP
www.foley.com

From: Riden, Stephen D.
Sent: Wednesday, August 06, 2008 5:06 PM
To: slh@hammondlawsf.com
Subject: Shade v. Gorman, et al.: Contact Info.

It was a pleasure to speak with you. My contact information is below. And my direct dial is

617-342-4078.

Regards

Stephen D. Riden
[Foley & Lardner LLP](#)
111 Huntington Avenue
Boston, MA 02199
(617) 342-4000
www.foley.com

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23 FILMS, LLC, FRAMEBIRD MEDIA, CHIP R.
24 BEASLEY, and ANDREW ELLIS,

25 Defendants.

26 Case No: 3:08-cv-03471-SI

27 **[PROPOSED] ORDER GRANTING**
28 **EXTENSION OF TIME TO RESPOND TO**
29 **THE COMPLAINT**

30 Judge: Hon. Susan Illston
31 Dept: Courtroom 10, 19th Floor

1 Having reviewed Defendant Andrew Ellis' submissions and GOOD CAUSE appearing
2 therefor, IT IS HEREBY ORDERED THAT:

3 Defendant Andrew Ellis' time to respond to the Complaint is enlarged until
4 September 8, 2008.

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Dated: _____, 2008

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Honorable Susan Illston
United States District Judge

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